

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Darin Brusiter,)	CASE NO. 1:15 CV 2194
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Christopher LaRose, Warden)	<u>Memorandum of Opinion and Order</u>
)	
Respondent.)	

Introduction

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Knepp (Doc. 12) which recommends dismissal of the Petition for Writ of Habeas Corpus pending before the Court. Petitioner filed objections to the recommendation. For the following reasons, the Report and Recommendation is ACCEPTED.

Standard of Review

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any

proposed finding or recommendation.”

Discussion

Petitioner is incarcerated following a guilty plea in connection with the murder of Samuel Wilson’s wife for insurance money. Prior to the guilty plea, the trial court denied a motion to suppress statements petitioner had made to police. Petitioner sets forth three grounds for relief in his habeas petition: 1) The trial court erred in overruling his motion to suppress. 2) Trial counsel was ineffective for failing to perform proper research for the suppression hearing. 3) Trial counsel was ineffective for inducing petitioner to enter into the guilty plea. The Magistrate Judge concluded that all claims were procedurally barred. This Court agrees.

As to Ground One, petitioner raised this claim on direct appeal but the court of appeals found it to be waived as a result of the plea. Petitioner failed to timely appeal that ruling. Therefore, the claim was not properly exhausted. As to Ground Two, petitioner failed to present this issue on direct appeal and, thus, the claim is procedurally defaulted. As to Ground Three, petitioner did not present this argument to the state courts. It is procedurally defaulted as well.

For these reasons, the Court agrees with the Report and Recommendation, which is incorporated herein, and the Petition is dismissed.

Conclusion

For the reasons set forth herein and for the reasons set forth in the Magistrate Judge’s Report and Recommendation, the Petition for Writ of Habeas Corpus is dismissed. Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this

decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed.R.App.P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan

PATRICIA A. GAUGHAN
United States District Judge

Dated: 3/2/17